

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 1:14-cr-00070-SO
Cleveland, Ohio
Plaintiff, Monday, February 23, 2015
9:10 a.m.

vs.

NEAL ATWAY,
SCOTT COCHRAN,

Defendants.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE SOLOMON OLIVER, JR.,
CHIEF UNITED STATES DISTRICT JUDGE

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216-357-7092

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produced by computer-aided transcription.

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Williamson - Direct/Mr. Bennett

1 Call your next witness. We'll go a few minutes.

2 MR. BENNETT: Thank you, Your Honor. This
3 should be brief. The government calls Hugh Williamson.

4 THE COURT: Before you take your seat, my
14:57:44 5 deputy will swear you in.

6 (The witness is sworn.)

7 THE COURT: You may be seated.

8 DIRECT EXAMINATION OF HUGH S. WILLIAMSON

9 BY MR. BENNETT:

14:58:00 10 Q. Good afternoon, agent Williamson. Can you please
11 introduce yourself to the Ladies and Gentlemen of the Jury
12 and spell your complete name for the court reporter?

13 A. My name is Hugh S. Williamson. That's H-U-G-H, Hugh;
14 S, as in Stuart; Williamson, W-I-L-L-I-A-M-S-O-N.

14:58:20 15 Q. And by whom are you currently employed?

16 A. I'm currently employed with the FBI as a supervisory
17 special agent.

18 Q. And where are you located?

19 A. I'm located in Quantico at the Operational Technology
14:58:32 20 Division.

21 Q. And what is your actual job title?

22 A. I'm the program manager for the body recorder program
23 for the FBI.

24 Q. And in that capacity what are your job duties?

14:58:43 25 A. I'm responsible for the acquisition and deployment of

Williamson - Direct/Mr. Bennett

1 body recorders to all the FBI field offices, and I'm also
2 involved in training new agents in how to use body
3 recorders.

14:59:00 4 **Q.** And let's just, since we mentioned it a couple times,
5 make sure everyone understands, what is a body recorder?

6 **A.** A body recorder is a very small computer, basically a
7 solid state digital computer. It is designed to record
8 audio or audio/video covertly, and is done so that it can be
9 used by an agent or a source to record meetings with
14:59:23 10 persons.

11 **Q.** And is it referred to as a body recorder because it's
12 normally somehow affixed to or attached to a person's body
13 or does it need not to be actually attached?

14 **A.** It doesn't have to be attached to a body.

14:59:36 15 **Q.** Have you heard of the term F Bird before?

16 **A.** Yes. An F Bird is an older term referring to the type
17 of body recorder made by ADS, Adaptive Digital Systems,
18 which are the majority of our recorders.

19 **Q.** So the recorders are not actually made by the FBI,
14:59:56 20 they're made by another company?

21 **A.** Yes. They're manufactured by a company in California
22 called Adaptive Digital Systems, and they're basically made
23 completely there and then sent to us, and we deploy them.

24 **Q.** And is there a checks and balances between ADS and the
15:00:13 25 FBI with regard to the software and the accessibility and

Williamson - Direct/Mr. Bennett

1 certain codes that is kind of built into the security of the
2 recorders?

3 **A.** In order for the recorder to -- to use the recorder
4 there's a software package that the manufacturer has
15:00:27 5 proprietary software, as well as the proprietary software on
6 the digital recorder. They completely control that. They
7 have all the coding, and we don't have the coding. They
8 program them, they make them work a certain way, and then
9 they send us a software you use to download the recordings
15:00:46 10 and erase the recorder. But that software itself is
11 entirely a software that's maintained and updated and backed
12 up by the company. We just get updates from the company.
13 We don't do anything to change the software.

14 **Q.** So in essence, the FBI doesn't have a way to alter any
15:01:06 15 of the recordings?

16 **A.** No, sir, no way to change that software on our part.
17 We'd have to go back to the company.

18 **Q.** Have you also heard of a recorder model the Eagle 4A?

19 **A.** Yes. The Eagle 4A is an audio only recorder. It was
15:01:19 20 manufactured by Adaptive Digital Systems.

21 **Q.** And in preparation for your testimony here today were
22 you able to ascertain the body recorder that was used here
23 by the Youngstown agents?

24 **A.** I was given the serial numbers for the body recorders
15:01:35 25 and verified that they were body recorders that were

Williamson - Direct/Mr. Bennett

1 manufactured and deployed by us to the Cleveland FBI.

2 **Q.** And can you explain how these recorders actually work,
3 in essence?

4 **A.** Basically, again, they're a little computer, very
15:01:53 5 small, and they're designed by the company so that they will
6 record only either audio or audio and video recordings. And
7 they're designed in such a way that you can turn it on, it
8 will record; you can turn it off, it will stop recording.
9 If you turn it on again it will start another session, it
15:02:10 10 won't record over the first session. It will keep recording
11 until it runs out of memory or runs out of power. And as
12 long as it's on, it will be recording if it's functioning
13 properly.

14 There's no way that you can take the recording off of
15:02:27 15 the recorder until you hook the recorder to a computer with
16 the software called the Bird software, which allows you to
17 transfer the recording that was made on the recorder to an
18 evidentiary disk. While the recorder is recording it
19 creates an authentication hashing. It's a numerical coding
15:02:49 20 on the computer on the recorder. It verifies that it is an
21 authentic recording. And when that is transferred to an
22 evidentiary disk that authentication is kept with it, and it
23 will only play on the Bird software if that code matches, it
24 authenticates.

15:03:10 25 The recording is a bunch of numbers, so if the

Williamson - Direct/Mr. Bennett

1 recording is a bunch of numbers, say the number 100, and the
2 authentication is 2, 2 times a hundred equals 200. If you
3 were to do anything to the recording you'd change the
4 number, it would be like 2 times 101. It wouldn't equal
15:03:29 5 200, it would be 202, and so it wouldn't play on the
6 recorder. The recorder has to see that the equation works
7 according to the authentication code to be played again.

8 **Q.** And then once it's taken from the recorder and put
9 into the system, the F Bird 2, you can have an evidentiary
15:03:46 10 copy so you can bring it in here and play it?

11 **A.** Yes. So you have the evidentiary copy you've made on
12 the Bird software, and the Bird software allows it to export
13 a player, a Bird player. The proprietary software will only
14 allow you to play that recording because it's not like your
15:04:05 15 common recording you have on your MP3 or iPhone, it's a
16 different format, it's proprietary. And we can give the
17 evidentiary copy to somebody to review, but they can only
18 listen to the evidentiary copy with that proprietary player.
19 If you try to play it on anything else you wouldn't hear
15:04:22 20 anything.

21 **Q.** And again, it's set up to not be able to be altered in
22 any way, and if per any chance it would be altered, you're
23 saying that kind of the algorithm that's there and the
24 series of numbers would not allow it to play?

15:04:35 25 **A.** That's correct. The whole purpose of going to this

Williamson - Direct/Mr. Bennett

1 company and the way they designed it is so when you record
2 it, it is fixed. You can't change it. If you were to
3 change it it would conflict with the authentication code
4 that happened when it was recording, so it wouldn't play,
15:04:51 5 and you'd know that it was not the original recording
6 because it wouldn't play, you'd have an error code.

7 **Q.** And I believe you said every time you stopped and
8 started you get a new session?

9 **A.** That's correct. Every time you start it and stop it
15:05:03 10 it creates a new session. It keeps the -- say you turn it
11 on and it played or it recorded for an hour. If you turn it
12 off and turn it on again it would keep that hour and start
13 another recording. And you would keep doing that as long as
14 you had memory on the recorder.

15:05:17 15 **Q.** And when it's transferred over that information
16 travels with it?

17 **A.** That's correct.

18 **Q.** So I couldn't have a conversation I started and get to
19 a point where I don't want to record this and then start
15:05:28 20 recording again and it would look like one big continuous
21 session with 15 minutes out of it?

22 **A.** No. It would show you when you turned on and turned
23 off the recording. It would show as a record of when the
24 recorder was turned on and when it was turned off, and the
15:05:41 25 evidentiary copy would show all the recordings that were

Williamson - Direct/Mr. Bennett

1 made on that recorder.

2 **Q.** And can I rewind it and go over something if I didn't
3 like how something went?

4 **A.** No. There was a -- this version here, the Eagle 4A,
15:05:55 5 was originally designed to allow to plug in an audio jack
6 and listen. We disabled those. You couldn't listen,
7 there's no purpose to it. But the other -- you can't go
8 back and rewind it while you have the recorder. You have to
9 plug the recorder into the software in a computer, transfer
15:06:17 10 it to an evidentiary disk, and then it allows you to listen
11 to what it on the recorder.

12 **Q.** And so it's kind of a one-way recording?

13 **A.** It's a one-way recorder, exactly. You can record and
14 you can only listen if you download that software, that
15:06:34 15 recording through the software, the proprietary software to
16 an evidentiary disk, and you can only listen to it with the
17 proprietary software that checks the authentication code to
18 the recorder.

19 **Q.** And we talked about the recorder not being able to be
15:06:47 20 altered. With regard to that disk itself and what's been
21 downloaded, is there an edit function that the FBI has where
22 they can alter any of that?

23 **A.** No. There's nothing we can do to alter those. We can
24 delete them, is all we can do.

15:07:00 25 **Q.** And I think we talked briefly about the source code

Williamson - Direct/Mr. Bennett

1 and the proprietary nature of that. So the FBI doesn't
2 have --

3 **A.** Not all the source code is maintained by Adaptive
4 Digital Systems. They have a vested interest in keeping
15:07:14 5 that, in keeping that secure. We're not their only
6 customer, and they want to make sure that what they sell
7 cannot be tampered with. That's what they sell, something
8 that can't be tampered with.

9 **Q.** And then I believe you said earlier "if they work."
15:07:26 10 Have you seen instances where they do, in fact, malfunction?

11 **A.** Yes, I've seen them fail as they get -- because
12 they're little computers. Imagine taking a computer and you
13 stick it -- you may keep your computer in your house in air
14 conditioning and maintaining the temperature. If you stick
15:07:44 15 it outside and it gets hot or cold, it would eventually
16 damage your computer board. These little computers are
17 subject sometimes to extreme temperatures, heat, and
18 humidity. The boards expand, contract, and they break, and
19 they fail. I've seen them fail. And subsequently we
15:08:00 20 decommission recorders after a certain period of time if
21 they're too old. It is like having an eight-year-old
22 computer. You get rid of it and get a new computer.

23 **Q.** And the Eagle 4A that we mentioned earlier is one of
24 the ones that had been used here. Is that an older unit?

15:08:16 25 **A.** Yes. It's -- the two -- the two serial numbers I was

Williamson - Direct/Mr. Bennett

1 given for the two recorders used are old. They are
2 now -- that model is decommissioned, it is no longer
3 authorized for use after January 31. To the best of my
4 recollection, they're over ten years old.

15:08:35 5 **Q.** And so if an agent out in the field has one that
6 malfunctions, what's the kind of protocol for that?

7 **A.** If it malfunctioned it doesn't record. You don't have
8 a recording or you may have a partial recording. Instances
9 happen where someone will turn it on and think it's turned
10 on, and they go to the meeting of some sort and they think
11 they recorded the conversation, and they get back, and it
12 didn't work, and there's nothing we can do. Or you turn it
13 on and it stops halfway or for only a minute, and the best
14 you can do is whatever is on the recorder is what was
15:09:06 15 recorded.

16 And they usually -- they can malfunction because
17 someone failed to turn the button on correctly or they
18 turned it off by accident, or the battery went dead, or
19 because the solid state computer failed because it's got a
15:09:22 20 malfunctioning chip or something.

21 **Q.** And if an agent comes across one that does fail on
22 them do they send it back, do they try to get it fixed?

23 **A.** Well, yes, they can send it back to the manufacturer,
24 they can see if they can fix it. With the old ones they
15:09:36 25 can't fix them because the parts for them aren't even

Williamson - Cross/Mr. Synenberg

1 manufactured anymore, so we get new recorders and give them
2 new ones.

3 **Q.** Again, with regard to your anticipated testimony here
4 today, other than being provided those serial numbers, were
15:09:49 5 you asked to look at any other information? Did you review
6 any other documents in any way relative to the facts of the
7 evidence in this case?

8 **A.** No, nothing at all. I'm just here to tell you how a
9 recorder works and the fact those two recorders were, in
15:10:03 10 fact, Eagle 4A's we issued to Cleveland, and they're now
11 decommissioned and should not be used.

12 **MR. BENNETT:** No further questions. Thank you
13 very much.

14 **THE COURT:** Any questions, Mr. Synenberg?

15:10:14 15 **MR. SYNENBERG:** Yes, Your Honor. Thank you.

16 **CROSS-EXAMINATION OF HUGH S. WILLIAMSON**

17 **BY MR. SYNENBERG:**

18 **Q.** Agent Williamson, in preparation for your testimony
19 here you said you went back and checked the serial numbers
15:10:32 20 of the body recorders that you had acquisitioned to the
21 Youngstown FBI, correct?

22 **A.** I was sent the serial numbers by the Youngstown -- by
23 the agents here in Cleveland, the two serial numbers that
24 were used.

15:10:44 25 **Q.** Have you ever seen two body recorders being used at

Williamson - Cross/Mr. Synenberg

1 the same time in the event that one of them malfunctions to
2 get the conversation on the other recorder?

3 **A.** We sometimes use body recorders in that situation. We
4 could do that theoretically.

15:11:06 5 **Q.** In preparation for your testimony today were you
6 informed that on November 5, 2012, there was a body recorder
7 used in this case that malfunctioned?

8 **A.** No.

9 **Q.** You did not know that? Now, when a body recorder
15:11:24 10 malfunctions what is the agent supposed to do?

11 **A.** Go to the tech agent and say my body recorder didn't
12 work, and you get a new body recorder.

13 **Q.** Are they required to get an answer or figure out why
14 it malfunctioned?

15:11:39 15 **A.** You can send the recorder back and we can look at it
16 and see why it malfunctioned, send it back to the
17 manufacturer. We can do a test on it to see if it was a
18 lock -- we could test it ourselves and see does it work for
19 us, did they put the battery in right, is there something
15:11:53 20 wrong with it that we can see, and then we'd send it back to
21 the manufacturer to see if they could see if something was
22 wrong with it.

23 **Q.** In preparation for your testimony here today were you
24 asked to check the records of the FBI in Quantico to
15:12:07 25 determine whether or not the recorder that malfunctioned on

Williamson - Cross/Mr. Synenberg

1 November 5, 2012, had in fact malfunctioned or had just been
2 turned off?

3 **A.** No, sir.

4 **Q.** So are you hearing this for the first time from me
15:12:21 5 that there was a body recorder on November 5 of 2012 worn by
6 Chuck Muth to capture a conversation with Neal Atway for two
7 and a half hours that malfunctioned?

8 **A.** That's the first I've heard of it, yes, sir.

9 **Q.** Now, when you talk about malfunction, malfunction to
15:12:40 10 me is different than Chuck Muth deciding to turn it off.
11 Can a person wearing the body recorder turn it off if he
12 chooses to?

13 **A.** That specific recorder, yes, they could.

14 **Q.** Okay. And we're not talking about -- turning it off,
15:12:57 15 does that equate with a malfunction?

16 **A.** No. But if you have a recording you'd have to go back
17 and see why it stopped recording, and there would be a code
18 that would show up to say why it stopped recording when you
19 go to look at it with a software. It could tell you battery
15:13:10 20 failure, it was turned off; or something else, an error code
21 of another kind.

22 **Q.** But who would I go to, if not you, in the FBI to look
23 at their records to see if there is a record as to whether
24 or not this November 5, 2012 recorder malfunctioned or was
15:13:30 25 just turned off?

Williamson - Cross/Mr. Synenberg

1 **A.** You'd have to talk to the case agents here as to what
2 record they have. We don't maintain records like that at
3 Quantico.

4 **Q.** Okay. Now, I would imagine the circumstances are such
15:14:00 5 when someone is asked to wear a body recorder that they're
6 put in danger.

7 **A.** Sometimes that happens.

8 **Q.** I mean, I would take it body recorders are used in
9 terrorist situations, investigations?

15:14:16 10 **A.** We use them in all our investigations, yes, sir.

11 **Q.** Drug investigations?

12 **A.** In all of our investigations, yes, sir.

13 **Q.** And is it a practice of the FBI to protect the person
14 who is wearing a body recorder for the FBI, to be listening
15:14:35 15 to what's going on in the event that their person with the
16 body recorder finds themselves in danger?

17 **A.** That is a decision made by the case agent, and it is a
18 case-by-case basis.

19 **Q.** And so for example, if an agent is in surveillance
15:14:53 20 outside of a building where someone is working undercover
21 with a body recorder, can that same body recorder transmit
22 what is being said back to the agent in that car in addition
23 to recording the conversation?

24 **A.** No, sir.

15:15:09 25 **Q.** Okay. How is that transmission from that person who

Williamson - Cross/Mr. Synenberg

1 is working undercover --

2 THE COURT: Mr. Synenberg, I don't mean to
3 interrupt. I'm going to have to take a break now, and then
4 we'll come back. Let's take about 20 minutes.

15:15:24 5 THE CLERK: All rise.

6 (Recess had.)

7 (Proceedings in the presence of the Jury:)

8 THE COURT: Sir, you're still under oath.

9 Sir, do you understand?

15:41:09 10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. Mr. Synenberg?

12 MR. SYNENBERG: Thank you, Your Honor.

13 Q. Agent Williamson, I think you told us at the beginning
14 of your testimony that you were program manager and head of
15:41:18 15 acquisition and deployment of recorders to all FBI offices.
16 Is that correct?

17 A. Yes, sir.

18 Q. Are you the person who communicates with this company
19 that provides these recorders? I think you said it's ADS?

15:41:38 20 A. I'm one of the persons, yes, myself and the engineers
21 who work with me.

22 Q. So is there a protocol in the FBI to make sure that
23 when a recorder malfunctions that there's a record kept of
24 it to prevent that recorder from again being used until you
15:41:56 25 know why it malfunctioned?

Williamson - Cross/Mr. Synenberg

1 **A.** If the recorder is sent to us we would have a record
2 of it of that going back to ADS, but if the recorder wasn't
3 sent to our office then I wouldn't have that.

4 **Q.** And what circumstances exist that permit an agent in
15:42:13 5 the field with a malfunctioning recorder to make a decision
6 not to return it to you?

7 **A.** I can't speak for the case agent or the tech agent in
8 the field to what they did or didn't do, sir.

9 **Q.** Okay. And we talked -- before the break we were
15:42:30 10 talking about the ability to transmit a conversation on a
11 person who is wearing a body recorder to an agent who's
12 doing surveillance. Do you recall that?

13 **A.** Yes, sir.

14 **Q.** And I think you said that the body recorder records,
15:42:45 15 it does not transmit.

16 **A.** That's correct.

17 **Q.** So what would a person wearing a body recorder also
18 wear to transmit the conversation to the agent in the
19 vehicle or somewhere else to protect that person if he
15:43:02 20 needed protection?

21 **A.** They would wear a transmitter.

22 **Q.** And how big is a transmitter?

23 **A.** It depends on how far you're trying to transmit. I'm
24 not a transmitter expert, but I think they are roughly the
15:43:15 25 same size as the body recorders usually.

Williamson - Cross/Mr. Synenberg

1 Q. And how big is a body recorder?

2 A. The Eagle 4A is about this square (indicating). It's
3 not very big. It's about a couple inches by a couple
4 inches.

15:43:25 5 Q. And what does it look like? Is it put inside a fob?
6 Is it disguised as a fob in a key chain?

7 A. The Eagle 4A is an aluminum case. It's a square
8 aluminum case that contains it, a couple inches square and
9 about a quarter-inch thick.

15:43:43 10 Q. And is there a protocol to give an agent in the field
11 guidance to when he should also have the person wearing a
12 body recorder wearing a transmission device?

13 A. That's something I don't deal with. That would be
14 something decided operationally in the field.

15:44:02 15 Q. So it's not mandated -- I'm an agent and I'm sending
16 someone undercover with a body recorder -- that I also make
17 sure they have a transmitter so I can listen to what's being
18 said?

19 A. I don't know, sir. I can't speak to that. I'm not
15:44:15 20 familiar with that.

21 MR. SYNENBERG: Thank you. I have no further
22 questions.

23 THE COURT: All right. Will there be any
24 examination on behalf of Mr. Cochran?

15:44:32 25 MR. JUHASZ: Thank you, Your Honor.

Williamson - Cross/Mr. Juhasz

1 CROSS-EXAMINATION OF HUGH S. WILLIAMSON

2 BY MR. JUHASZ:

3 Q. Mr. Williams, how are you doing today?

4 A. Good, sir. Thank you.

15:44:39 5 Q. Good. I just have a couple questions to follow up on
6 some of the things you've been asked. Did I hear you
7 say -- you said these recorders can start to malfunction for
8 a variety of reasons, correct?

9 A. They can. It's rare, but they can.

15:44:51 10 Q. They're like little computers, right?

11 A. Yes, sir.

12 Q. It's rare, but it happens, right?

13 A. Yes, sir.

14 Q. Have you run across any sort of equipment that never
15:44:57 15 malfunctions on any occasion? Everything is subject to
16 malfunction, right?

17 A. Eventually, yes, sir.

18 Q. Okay. Now, I think you were talking about it would be
19 sort of the analog if you left your computer outside to be
15:45:12 20 exposed to the elements, eventually it would break down and
21 malfunction, correct?

22 A. Yes, sir.

23 Q. And the same sort of thing can happen here if I get
24 nervous because -- I'm sweaty because I'm going into a
15:45:23 25 meeting with three mobsters wearing a wire, whatever it is.

Williamson - Cross/Mr. Juhasz

1 That might or can affect the computer eventually, correct?

2 **A.** If moisture gets into the container eventually it
3 would, but it's a contained device. It's protected from the
4 body --

15:45:38 5 **Q.** Okay.

6 **A.** -- sweat and stuff.

7 **Q.** So when you say, for example, I thought I heard you
8 say chip failure --

9 **A.** If the computer itself were to fail I call that a chip
15:45:49 10 failure. I'm not a computer scientist. I just am referring
11 to the solid state recorder failing. It has computer chips
12 in there. If it's exposed to heat and cold and it expands
13 and contracts, that can break the contacts, the chips with
14 the board, and the electrical connections.

15:46:07 15 **Q.** Okay. And I thought I heard you say when
16 Mr. Synenberg was asking you some questions about protocol,
17 if a recorder like this fails, did I hear you say that
18 there's a way to access it through the computer software to
19 sort of figure out why it failed?

15:46:28 20 **A.** Whenever you make a recording, the only way you can
21 get the recording off the recorder is to hook the recorder
22 up to the US Bird software, and if there is a recorder on
23 there it will show. And if for some reason it stops
24 recording it will show you why it stopped: Was it turned
15:46:44 25 off, was there a loss of power, that sort of thing.

Williamson - Cross/Mr. Juhasz

1 Q. All right. So two different things there. First of
2 all, you need the software to download the actual recording
3 of whatever meeting or whatever the person was wearing the
4 wire for, correct?

15:46:59 5 A. Yes, sir.

6 Q. But then if you have a situation where it fails, where
7 the body recorder fails, if I understand it, you can load it
8 into this software and it will say, well, someone took the
9 battery or someone turned it off, or the chip failed.

15:47:13 10 A. If for some reason somebody failed to turn it on or it
11 didn't turn on at all it wouldn't show anything at all, but
12 if it turned on and turned off it would show some activity
13 on the board, on the computer, on the software. But again,
14 you have to hook it up to the software to see what it would
15 say.

16 Q. And if I further understand it, in connection with
17 this case nobody ever sent you a recorder saying can you
18 figure out why this thing didn't work?

19 A. No, sir.

15:47:42 20 Q. And then the last thing is, so if I understand it, you
21 can't alter a recording that's made, correct?

22 A. You cannot alter these recordings. To the best of my
23 knowledge, there's no way to alter a recording on an ADS
24 recording.

15:47:56 25 Q. The only way to alter it is just to delete it

Williamson - Further Redirect/Mr. Bennett

1 altogether?

2 **A.** Completely destroy it, delete it.

3 MR. JUHASZ: That's all I have. Thank you.

4 THE COURT: All right. Anything further,

15:48:06 5 Mr. Bennett?

6 FURTHER REDIRECT EXAMINATION HUGH S. WILLIAMSON

7 BY MR. BENNETT:

8 **Q.** One question, Agent Williamson. And I don't know that
9 you would necessarily know, but if there is a failure out in
10 the field and say a body recorder, if they get it back after
11 an hour-long meeting and there's just nothing there, not
12 even the preamble or any of that information, do you know
13 what the agent in the field, what their standard operating
14 procedure is for the agent in the field to do if they've had
15:48:33 15 that malfunction?

16 **A.** Normally they would go to a tech agent and have the
17 tech agent look at it. I mean, they could look at it
18 themselves on the Bird software. They could try to turn it
19 on and turn it off themselves and see if it still worked.
15:48:47 20 They could very well have failed to turn it on. Going back,
21 they would have to look back and see what they think
22 happened and talk to a tech agent. If they couldn't figure
23 it out they could send it back to us.

24 **Q.** And what about the gathering of any information that
15:49:01 25 may have occurred during that hour-long meeting? Do you

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1 know what the protocol is there?

2 **A.** If it's not on the Bird recorder there's no
3 information to be gathered. It's either on the recorder or
4 it's not.

15:49:12 5 MR. BENNETT: Okay. No further questions.
6 Thank you.

7 MR. SYNENBERG: No further questions, Your
8 Honor.

9 MR. JUHASZ: No other questions, Your Honor.
15:49:18 10 Thank you.

11 THE COURT: All right. You may step down,
12 sir.

13 Call your next witness.

14 MS. BACON: Thank you, Your Honor. The United
15:49:23 15 States calls Special Agent Herb Fitzgerald.

16 THE COURT: Go ahead, go around and take the
17 stand. And before you take your seat my deputy will swear
18 you in.

19 (The witness is sworn.)

15:50:43 20 THE COURT: You may be seated.

21 DIRECT EXAMINATION OF HERBERT D. FITZGERALD, JR.

22 BY MS. BACON:

23 **Q.** Sir, would you tell us your name and spell your last
24 name for the court reporter?

15:50:56 25 **A.** Herbert D. Fitzgerald, Junior. F-I-T-Z-G-E-R-A-L-D.